



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2017-0020; FRL-9963-15-Region 8]

Approval and Promulgation of Air Quality Implementation Plans; Montana; Revisions to the Administrative Rules of Montana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve State Implementation Plan (SIP) revisions submitted by the state of Montana on September 8, 2016. The revisions are to the Administrative Rules of Montana (ARM) and include updates to the citations and references to federal and state laws and regulations, updated links to sources of information, and provides clarity on how copies of federal regulations may be obtained. This action is being taken in accordance with section 110 of the Clean Air Act (CAA).

DATES: This rule is effective on **[Insert date 90 days after date of publication in the Federal Register]** without further notice, unless the EPA receives adverse comment by **[Insert date 30 days after date of publication in the Federal Register]**. If the EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the Federal Register informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R08-OAR-2017-0020 at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you

consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system).

Docket: All documents in the docket are listed in the www.regulations.gov index.

Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. The EPA requests that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding federal holidays. For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Jaslyn Dobrahner, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mail Code 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-6252, dobrahner.jaslyn@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Why is the EPA Using a Direct Final Rule?

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the “Proposed Rules” section of the Federal Register, we are publishing a separate document that will serve as the proposed rule to approve the SIP revisions if adverse comments are received on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the ADDRESSES section of this document.

If the EPA receives adverse comments, we will publish a timely withdrawal in the Federal Register informing the public that the rule will not take effect. If the EPA receives adverse comment on an amendment, paragraph, or section of this rule, the EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. We would address all public comments in a subsequent final rule based on the proposed rule.

II. What should I consider as I prepare my comments for EPA?

1. Submitting CBI. Do not submit CBI to the EPA through <https://www.regulations.gov> or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD ROM that you mail to the EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.
2. Tips for preparing your comments. When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register, date, and page number);
- Follow directions and organize your comments;
- Explain why you agree or disagree;
- Suggest alternatives and substitute language for your requested changes;
- Describe any assumptions and provide any technical information and/or data that you used;
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced;
- Provide specific examples to illustrate your concerns, and suggest alternatives;
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats; and
- Make sure to submit your comments by the comment period deadline identified.

III. Background

On September 8, 2016, the state of Montana submitted formal revisions to its SIP (hereafter, the “2016 SIP revisions”). The 2016 SIP revisions contain amendments updating citations and references to federal and state laws and regulations in ARM sections 17.8.102 and 17.8.103. The Montana Board of Environmental Review adopted the amendments on May 29, 2015 (effective June 26, 2015).

IV. Review of the State of Montana’s September 8, 2016 Submittal

We evaluated Montana’s September 8, 2016 submittal regarding revisions to the State’s ARM. The 2016 SIP revisions to ARM 17.8.102 and 17.8.103 update the citations and references

to federal and state laws and regulations, update links to sources of information, and provide clarity on how copies of federal regulations may be obtained. All of the 2016 SIP revisions are approvable. Therefore, in this action we are approving revisions to ARM sections 17.8.102 and 17.8.103 as detailed in Section V below.

V. What Action is the EPA Taking?

The amendments to Montana ARM 17.8.102 and 17.8.103 update the date of the version of the federal regulations incorporated by reference regarding air quality rules as they existed on July 1, 2014, federal statutes as they existed on December 31, 2013, and the September 30, 2014 edition of the ARM. Therefore, the EPA is taking direct final action to approve the following revisions, shown in Table 1, to Montana's air rules.

Table 1 - List of Montana Revisions the EPA is Approving

Revised Sections in September 8, 2106 Submittal for Approval
<u>September 8, 2016 submittal</u> : 17.8.102(1)(a)-(c); 17.8.103(4) and (5)

VI. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of Administrative Rules of Montana described in the amendments set forth to 40 CFR part 52 below. Therefore, these materials have been approved by the EPA for inclusion in the SIP, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA's approval, and will be incorporated by reference by the Director of the

Federal Register in the next update to the SIP compilation.¹ The EPA has made, and will continue to make, these materials generally available through www.regulations.gov and/or at the EPA Region 8 Office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information).

VII. Statutory and Executive Orders Review

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations (42 USC 7410(k), 40 CFR 52.02(a)). Thus, in reviewing SIP submissions, the EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this direct final action merely approves some state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, Oct. 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 USC 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 USC 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR

¹ 62 FR 27968 (May 22, 1997).

43255, Aug. 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 USC 272 note) because application of those requirements would be inconsistent with the CAA; and,
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, Feb. 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60

days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See CAA section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Greenhouse gases, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 et seq.

Dated: May 12, 2017.

Suzanne J. Bohan,
Acting Regional Administrator,
Region 8.

40 CFR part 52 is amended to read as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart BB – Montana

2. Section 52.1370(c) is amended under “(i) Administrative Rules of Montana, Subchapter 01, General Provisions” by revising entries “17.8.102” and “17.8.103”.

The revisions read as follows:

§ 52.1370 Identification of plan.

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(c) * * *

State citation	Rule title	State effective date	EPA final rule date	Final rule citation	Comments
(1) Statewide					
(i) Administrative Rules of Montana, Subchapter 01, General Provisions					
* * * * *					
17.8.102	Incorporation by Reference	6/26/15	[Insert date of publication in the <u>Federal Register</u>]	[Insert <u>Federal Register</u> citation]	
17.8.103	Incorporation by Reference	6/26/15	[Insert date of publication in the <u>Federal Register</u>]	[Insert <u>Federal Register</u> citation]	
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